IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 23233 of 2003

Between:

Mr.V.Vijaya Bhaskara Reddy, s/o V.Ramachandra Reddy, Regional Centre, Indira Gandhi National Open University, Hyderabad, R/o Hyderabad.

... PETITIONER

AND

1 Indira Gandhi National Open University, Main Garhi, New delhi-110 068

rep. by its Registrar.
2 The Regional Director, Indira Gandhi National Open University, Regional

Centre, Street No.12, Himayatnagar, Hyderabad.
3 Mr.A.Kama Sastry, Assistant
Regional Centre, Indira Gandhi National Open University, Kolkatta.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction, writ or order, one in the nature of mandamus: - a) declaring the action of the respondents in issuing the impugned transfer dated 29-10-2003 bearing F.No.AD/2/NA/Estt.2003 5806 - office order No.2131 issued by the respondent No.1 herein transferring the petitioner herein from the respondent No.2 office to the Headquarters Office, New Delhi i.e., respondent No.1 office to accommodate the other candidates who want a place at Hyderabad on their request, and in the middle of the academic year and not on administrative grounds is arbitrary, illegal, malafide and the said impugned proceedings dated 29-10-2003 bearing F.No.AD/2/NA/Estt-2003-5806 may be set aside; b) directing the authorities to retain the petitioner herein at the Regional Centre, Hyderabad., i.e., respondent no.2 office c) granting all consequential benefits d) awarding costs;

Counsel for the Petitioner: MR.M.RAMA RAO

Counsel for the Respondents: SMT.A.CHAYA DEVI (SC for IGNOU)

The Court Made the Following Order:

ORDER:

The petitioner an Assistant in the employment of the Indira Gandhi National Open University (IGNOU) and working at the Regional Centre, Hyderabad, has filed this writ petition challenging his transfer to headquarters at Delhi by the impugned order dated 29.10.2003. The principal ground of attack is that the transfer order has been issued to accommodate other candidates, in particular, the 3rd respondent who is working at Kolkata. Ever since his initial appointment as Junior Assistant-cum-Typist on an adhoc basis in 1988 the petitioner has been continuously working at Hyderabad including the initial post to which he was appointed as well as subsequent higher posts to which he was promoted from time to time.

Shri Rama Rao, the learned counsel for the petitioner admits that on principle the petitioner is liable to serve anywhere in India, in any regional center to which he is posted and that the post to which he is appointed in IGNOU is an all India post. His grievance, however, is that the transfer to the headquarters at Delhi from the regional center Hyderabad is only to accommodate the 3rd respondent.

Another contention urged is that he has been transferred on account of the earlier bout of litigation between himself and the respondent. This plea of *mala fides* viz., that he is being transferred only on account of the earlier writ petitions filed by him has not been substantiated except by stating it as a bald allegation and no person nor authority has been impleaded nor specified as

having any malice against him.

Respecting the allegation that he has been transferred to accommodate the 3rd respondent the respondent university in its counter affidavit filed on behalf of the respondents 1 and 2 has pleaded as under:

a. that the IGNOU is having headquarters at Delhi and regional centers in all the States with employees belonging to every part of the country. As a matter of policy efforts are made to ensure that the employees are posted to an office nearer to their native places.

b. Transfers are affected keeping in view the requirement of staff at a particular place with special consideration that employees especially in the subordinate cadre have a chance to be posted by rotation at their hometown or at the office nearest to his hometown. It is further ensured administratively that chances are given to every such employee in the subordinate cadre as per the transfer policy.

It is contended that petitioner had been transferred pursuant to the above policy. The counter affidavit further states that the petitioner had continuously served only in Hyderabad and that, three other persons including the 3rd respondent have either predominantly or exclusively served out side the home State. Insofar as the 3rd respondent is concerned, the counter affidavit on behalf of the respondents 1 and 2 avers that ever since 20.06.1990 up to the date of the impugned order, the said respondent though belonging to Andhra Pradesh had served at the Regional Centre, Kolkata. Consistent with the policy of the IGNOU to accommodate employees in their home State at least for some duration in their career, the first and second respondents transferred the 3rd respondent to Hyderabad and the petitioner to the headquarters.

To support his contention that even the transfer of an employee to accommodate others would be an invalid and arbitrary exercise of administrative powers, the petitioner relied on a decision of Supreme Court in **B. Varadha Rao v. State of Karnataka**. It is trite that a precedent should not be construed as a statute and that the principles emerging from a decision

should normally be understood in the light of the facts and circumstances which fertilise the principle enunciated in a decision. In the precedent cited the Supreme Court held as under:

> *"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public, interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot but be held as in fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."*

> *The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government servant, any of his conditions of service making the impugned order appealable under R. 19(1)(a) of the Rules.*

Accommodation of an employee's concerns *per se* does not constitute a species of *mala fides*. The accommodation of the interests and welfare of an employee are relevant and germane administrative consideration. The stated policy of IGNOU to provide an opportunity for employees belonging to a State to serve at least part of their service in the home State or nearer to the home State cannot be categorised as an arbitrary policy. In effectuation of such policy if the petitioner who is consistently working in Hyderabad is transferred to the headquarters to provide an opportunity to the 3rd respondent who has never worked in Hyderabad to work in his home State, such decision of the first respondent cannot be termed as arbitrary or *mala fide*.

This Court finds no warrant for interference with the impugned order of the transfer. The writ petition is devoid of merits and is accordingly dismissed. The petitioner desires to make a representation to the respondents for re-consideration of his transfer. It is stated that he had already made a

representation in this behalf. The dismissal of this writ petition does not preclude the respondents from considering any representation made by the petitioner. No costs.

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(GODA RAGHURAM, J)

June 29, 2004

Dsk/Pvks

To

1 Indira Gandhi National Open University, Main Garhi, New delhi-110 068

rep. by its Registrar.

2 The Regional Director, Indira Gandhi National Open University, Regional

Centre, Street No.12, Himayatnagar, Hyderabad.

3 Two C.D. Copies